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Supreme Court, U.S.
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No. 04-996

In The Supreme Court of the United States

DIANNA CLARK,

Petitioner,

v.

REDLAND INSURANCE COMPANY,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF FACTS

This is an insurance coverage action. Petitioner Dianna Clark seeks to recover under a policy issued to Lleze Thrag Industries ("LTI") for an automobile accident that occurred in Atlanta, Georgia involving her and one Tayo Reed. At the time of the accident, Reed was driving a vehicle she had previously leased from LTI in Atlanta, Georgia for a term of twenty-four months. The Leasing Agreement between LTI and Reed required Reed to purchase and maintain insurance coverage on the leased vehicle. At the time of the accident, however, Reed did not have such insurance. Clark obtained a judgment against LTI in Georgia, and then filed this coverage action in the Southern District of New York against Redland Insurance Company, the insurer of LTI's vehicles leased for terms of twelve months or less.

SUMMARY OF ARGUMENT

The only important issue in the case at this point is the choice-of-law question, which was correctly decided in all three federal courts below. The other issues Clark raises do not arise "in the context of meaningful litigation." *The Monrosa v. Carbon Black Export, Inc.*, 359 U.S. 180, 183 (1959).

ARGUMENT AND CITATION OF AUTHORITY

I. The District Court For The Southern District Of New York Properly Applied New York's Choice-Of-Law Rules.

As a general rule, the United States Supreme Court will follow lower federal courts' interpretation of state laws. *Stenberg v. Carhart*, 530 U.S. 914, 940 (2000); *McMillian v. Monroe County*, 520 U.S. 781, 786-87 (1997); *Virginia v. American Booksellers Ass'n, Inc.*, 484 U.S. 383, 394 (1988) (Supreme Court "rarely reviews a construction of state law agreed upon by the two lower federal courts"). The District Court for the Southern District of New York, as the transferor court, properly applied New York's choice-of-law rules when it transferred the case to the District Court for the Northern District of Georgia. *Ferens v. John Deere Co.*, 494 U.S. 516, 524-25 (1990) (choice-of-law rules of transferor court apply). New York's choice-of-law rules apply the "center of gravity" test to the interpretation of an insurance contract, analyzing "the place of contracting, negotiation and performance; the location of the subject matter of the contract; and the domicile of the contracting parties." *Allstate Ins. Co. v. Conigliaro*, 670 N.Y.S.2d 469, 480 (N.Y. App. Div. 1998), *quoting Matter of Allstate Ins. Co. (Stolarz)*, 597 N.Y.S.2d 904, 908 (N.Y. 1993) (applying Restatement (Second) of Conflict of Laws § 188(2)). The District Court for the Southern District of New York properly held that Georgia law applies because all the operative events occurred in Georgia and because there were no contacts with New York. Therefore, this Court should deny Clark's Petition for Writ of Certiorari.

II. There Is No Absolute "Right" To Oral Argument.

"The Constitution does not require oral argument in all cases. . . . To do so would do violence . . . to our own former decisions." *Federal Communications Comm'n v. WJR, The Goodwill Station, Inc.*, 337 U.S. 265, 276 (1949). The procedural due process right to be "heard" is satisfied if the parties have the opportunity to prepare and submit affidavits, memorandums of law, and other materials for a court to consider when ruling on a motion for summary judgment, and is within the discretion of the courts. *Id.* at 277; *Moore v. State of Fla.*, 703 F.2d 516, 519 (11th Cir. 1983) (citing cases and noting that "[i]t is now well-established that Rule 56 does not necessarily contemplate an oral hearing"). Clark filed responsive papers to Redland's Motion for Summary Judgment, filed her own Cross-Motion for Summary Judgment, and filed the Declaration of Dan Buckalew. Furthermore, the Eleventh Circuit Court of Appeals exercised its discretion when it denied Clark's request for oral argument. Therefore, this Court should deny Clark's Petition for Writ of Certiorari.

III. Clark's Procedural Complaints Are Moot.

Clark's procedural complaints regarding the District Court's failure to grant her leave to file a motion for summary judgment and the Declaration of Dan Buckalew are moot because the Eleventh Circuit Court of Appeals explicitly considered those documents when it affirmed the District Court's grant of summary judgment to Redland:

> We conclude that the contract alone supports the district court's conclusion and its entry of summary judgment. In coming to this conclusion, *we have also considered Clark's Cross-Motion for Summary Judgment and the supporting Declaration of Dan*

> *Buckalew*, both of which Clark untimely filed – over a month late – contrary to N.D. Ga. L.R. 56.1(C)'s requirements. Not only can we find no error in the district court's application of its Local Rules, but we also note that the Declaration itself does not change the unambiguous nature of the relevant policy language.

Clark Petition, Appendix A, at 5a-5b, Eleventh Circuit Opinion, n.1 (emphasis added). Therefore, this Court should deny Clark's Petition for Writ of Certiorari.

CONCLUSION

This Court should deny Clark's Petition for Writ of Certiorari because the District Court for the Southern District of New York properly applied New York's choice-of-law rules, transferring the case to the District Court for the Northern District of Georgia. This Court should deny Clark's Petition for Writ of Certiorari for the further reason that her procedural complaints are moot.

Respectfully submitted,

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